In the High Court of Judicature at Madras

Dated:31.01.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.481 OF 1997

Vellore Municipality
rep.by its Commissioner ..Appellant/Defendant

v

S.Shanmugam ..Respondent/Plaintiff

Second appeal filed against the judgment and decree dated 17.7.1995 made in A.S.No.94 of 1993 on the file of the Court of Subordinate Judge, Vellore confirming the Judgment and decree dated 31.3.1993 made in O.S.No.158 of 1992 on the file of the Court of Additional District Munsif, Vellore.

For Appellant : Mr.G.Muniratnam
For Respondent : No appearance.

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.94 of 1993 on the file of the Court of Subordinate Judge, Vellore. The defendant who has lost his defence before the Courts below is the appellant herein.

2. The averments in the plaint relevant for the purpose of deciding this appeal are as follows:

The suit is for an order of permanent injunction restraining the defendant his men, agents and servants from holding an auction of the lease hold right in respect of Plot No.7 of Vellore Sewage farm on 25.2.1992 or any other day till the plaintiff is evicted by due process of law. The defendant is the owner of certain lands collectively called as "Vellore Sewage farm. It consists of about 30 to 35 plots and each plot is being leased out by public auction. It is the usual practice for the Municipality to lease out the plots for one year and subsequently extend the period of lease for a period for five years at 10% enhanced lease amount. The defendant auctioned the lease hold right in respect of

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the sewage farm for the year 1991-92 on 14.2.1991 and this plaintiff was declared the successful bidder in respect of plot No.7 and he was given the lease hold right of the same for a period of one year with the usual understanding that the period of lease will be extended to a period of five years with a condition that the plaintiff gives enhanced amount at 10% annually.

2a) The plaintiff paid a sum of Rs.12,700/- towards the annual lease amount in respect of Plot No.7. The counterfoil of the challan for the payment made to the defendant is also produced by the plaintiff. The annual lease was fixed at Rs.14,300/- and the plaintiff had to pay the balance of Rs.1600/- towards the annual lease. Subsequently, a memo was issued by the defendant asking the plaintiff to pay the balance of Rs.1,600/- and also execute a lease deed in favour of the defendant. The said memo is also produced. In accordance with the demand, the plaintiff paid a sum of Rs.1600/- on 10.6.1991 and executed a lease deed as required by the defendant.

2b) Though the plaintiff had executed a lease agreement the copy of the same had not been furnished to the plaintiff. The plaintiff submits that as per the lease agreement the plaintiff is entitled to be in possession and enjoyment of the property on and from 1.4.1991 to 31.3.1992 and subject to the renewal of the lease for a further period of four years on any enhanced lease amount and continue his lease hold right for a further period of four years. The entire sewage farm plots are being enjoyed by the lessees in a similar manner. Each one expressing his willingness to continue the lease hold right for enhanced lease amount. The defendant is bound to extend the lease period as is the case in respect of other plots which are similarly situate.

2c) The plaintiff understands that the defendant is planning to auction the lease hold right in respect of Plot No.7 on 25.2.1992 contrary to their own undertaking that the lease hold right will be extended for a further period of four years. If the defendant auctions the lease hold right the plaintiff will be jeopardised. The plaintiff had committed any act violative of the terms and conditions of the lease. The plaintiff is not in arrears of lease amount and the plaintiff has already signified his willingness to have the lease amount enhanced and he is ready to pay the enhanced lease amount. As such plaintiff is entitled to an extension of the lease as the other lessees have been granted. But the act of the defendant to hold a public auction in respect of this plot alone will be unfair and discriminatory. The plaintiff is entitled to have his possession and enjoyment of the property as the provisions of the Cultivating Tenants Protection Act are applicable to the plaintiff also. The defendant had not terminated the lease by issuance of a notice or such other course open in law. But the defendant proposes to hold public auction of the lease hold right and thereby evicting the plaintiff by third parties which is clearly

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unlawful if not illegal. If the defendant succeeds in holding the auction the plaintiff's invaluable civil right will be lost besides the plaintiff will be forced to incur loss which cannot be compensated in terms of money. The proposed auction of the defendant has, therefore, to be restrained. Hence the suit.

3. The defendant in his written statement would contend that the said sewage farm and the said plot No.7 owned by the defendant situate at Virudhampattu Village in Gudiyattam Taluk and hence this Court has no territorial jurisdiction. There is no lease of the plots and what was auctioned was not the lease hold right of the said plots but only the licence to enjoy the usufructs. Every year, the defendant would conduct public auction for the issue of licence for enjoying the usufructs in the said plots for one year and there is no extension of period for five years as alleged falsely in the plaint. In the said auction conducted by the defendant, the plaintiff was declared as the highest bidder and hence he was given the licence to enjoy the usufructs that is grass grown in the said plot NO.7 for one year from 1.4.1991 to 31.3.1992 and the licence amount is for one year alone and there was no delivery of the said plot to the plaintiff, but he was given the right to enjoy the said usufructs. There was no interest created over the said plot. The allegation made in the plaint that there was an understanding that the period of lease will be extended to a period of five years on condition that the plaintiff gives enhanced amount at 10% annually is false and denied. The plaintiff was not put in possession of the said plot. As stated supra, there was no lease in favour of the plaintiff but only a licence for one year from 1.4.1991 to 31.3.1992 only.

3a) The plaintiff has failed and neglected to execute any agreement in favour of the defendant and hence the allegation that the plaintiff executed an agreement in favour of the defendant is false and denied. There is no lease and the plaintiff took part in the said public auction agreeing to the terms and conditions stated in the auction notice. There is no clause in the said auction notice for the extension of the period for four years and there is no provision for any extension of the period. The plaintiff is bound by the terms and conditions of the said auction notice. A fresh notice has to be issued after the expiry of the licence period and a licence to be given to the highest bidder for the year 1.4.1992 to 31.3.1993. Any extension of period without public auction is prohibited under the rules and regulations of the District Municipalities Act.

3b) The plaintiff being a licensee is not entitled to any notice of termination and he has no right to enjoy the said usufructs after the expiry of the licence on 31.3.1992. The allegations made in the plaint that the plaintiff is entitled to have his possession and enjoyment of the said property as per the provisions of the Cultivating Tenants Protection Act is false and denied and there is no basis in the plaint allegation and the plaintiff is not a tenant much less a

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cultivating tenant. The suit without giving the schedule of property is bad and not maintainable either in law or on facts. Only to get over the question of maintainability, the plaintiff has not furnished the schedule of property to the plaint. There is no good faith in filing of the above suit which is motivated to prevent the intending bidders from taking part in the public auction and to cause loss and damages to the defendant. Even though the plaintiff has every opportunity to take part in the public auction, he had chosen to file the above suit to enjoy the said usufructs without paying the licence amount. The defendant could not conduct the said auction on 25.2.1992 because of the filing of the above suit and the passing of the interim order dated 25.2.1992 in I.A.No.217 of 1992. After the dismissal of the said petition, the defendant had to conduct the public auction on 30.5.1992 after due and wide publicity and notice as per the provisions of law and in the said auction one Sisubalan was declared as the highest bidder even before the passing of the order in C.M.A.No.14 of 1992 on the file of the learned District Judge, Vellore and the said auction could not be confirmed due to the said orders passed in the said appeal filed by plaintiff. The defendant is put to heavy loss and damages and he reserves his right to proceed against the plaintiff for damages in a separate proceedings. Hence the suit is liable to be dismissed.

4. On the above pleadings, the trial Court had framed as many as five issues for trial. On the side of the plaintiff, Exs A1 to A6 were marked. On the side of the defendant, Exs B1 to B3 were marked. No oral evidence was let in by either of the parties.

5. After going through the documentary evidence available on record, the learned trial Judge has held that the plaintiff is entitled to the relief of permanent injunction as prayed for and consequently decreed the suit in the above lines. Aggrieved by the findings of the learned trial Judge, the defendant has preferred A.S.No.94 of 1993 on the file of the Court of Subordinate Judge,Vellore who also dismissed the appeal confirming the trial Court decree and Judgment of the trial Court in O.S.No.158 of 1992. Hence the second appeal has been preferred by the defendant.

6. The substantial questions of law involved in this appeal are

> " Whether the Courts below are right in holding that the respondent was holding the property on lease, when it is a licence granted by the appellant?
> 2. Whether the Courts below are right in granting permanent injunction, when even according to the respondent the lease expires after five years ie., on 13.2.1991?"

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7. The Points:

The entire case of the plaintiff rests only on the documentary evidence. In respect of Plot No.7 in the sewage farm belonging to the defendant, the plaintiff has took the right of enjoying usufructs in respect of Plot No.7 for the year 1991-92 in a public auction. As per the said right of lease, the plaintiff can grow grass with the help of sewage water in Plot No.7 and sell the same thereby earned income. The said lease hold right was given for one year only. According to the plaintiff, he is in possession of the above said Plot NO.7 in the capacity of lease holding over and without terminating his lease, the defendant has fixed another public auction for conducting the lease for the year 1992-93 as per Ex A4 . To show that he is a successful bidder in respect of Plot No.7, in the auction conducted for the year 1991-92, the plaintiff has produced Ex A1challan for having deposited the auction amount. Hence the plaintiff, challenging Ex A4 has come forward with the suit with a relief for an order of injunction not to dispossess him from Plot No.7 unless under due process of law. He has further requested that shall not be any public auction as per the notice of tender under Ex A4.

8.Per contra, it is the case of the defendant that the plaintiff is in possession of Plot No.7 as per the public auction took place in the year 1991-92 and that he is not a lessee but only a licensee and that the defendant has every right to conduct public auction in respect of the usufructs of plots covered under Sewage pasture scheme. No doubt, it is seen from the documents like Exs A1,A2 and A3 that the plaintiff is in possession of Plot No.7, in lieu of the public auction. So under such circumstances, it cannot be said that the plaintiff is only a licensee. The plaintiff is in possession of plot NO.7 under the public auction held in the year 1991-92 as per Ex A2. The right conferred under the public auction to enjoy the usufructs in Plot No.7 has not been terminated by any process known to law. Admittedly, the plaintiff is in possession of Plot No.7. Hence the plaintiff's possession in Plot No.7 is to be protected till he is evicted under due process of law. But at the same time, the plaintiff's claim that the defendant shall be restrained from auctioning the lease hold right in respect of Plot Nol7 in Vellore Sewage Farm to be held on 25.2.1992 cannot be granted because admittedly the sewage farm belongs to the defendant and the period of lease is only one year in favour of the plaintiff ie., the period from 1991-92.

9.Even though, the first appellate Court has dismissed the appeal it has not passed any order in respect of the public auction to be conducted in respect of Plot No.7 in a future date. If the blanket injunction order as prayed for is given then the defendant Municipality cannot conduct any public auction in respect of the property vested with the Municipality.

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10. Under such circumstances, I am of the view that while dismissing the appeal, the Judgment of the first appellate Court is to be modified in respect of the future auction of the Plot No.7 Sewage farm.

11. In the result, the appeal is dismissed confirming the decree and judgment in A.S.No.94 of 1993 on the file of the Court of Subordinate Judge, Vellore with the following modifications

"The relief for restraining the defendant his men agents and servants from holding an auction of the lease hold right in respect of Plot No.7 of Vellore Sewage Farm on 25.2.1992 or other date is dismissed. In other aspects, the first appellate Court's Judgment is confirmed. There will be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Subordinate Judge,Vellore.

2. The Additional District Munsif, Vellore.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.G.Munirathinam, Advocate Sr 5974

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